

REMARKS

Claims 21-71 are pending in this application. In the office action, the Examiner objected to the specification due to certain informalities. The Examiner also rejected claims 21-71 under 35 USC 112 as being indefinite in that it fails to point out what is included or excluded by the claims language. The Examiner has also rejected claims 21-71 under 35 USC 103(a) as obvious under Wilson (WO98/45745).

In response, the applicant has amended the specification and the claims 21-28, 35-42, 49, 50, 55, 57, 58, 59, 65, 66 and 71. Claims 21-71 are pending in this application. The foregoing amendments and the following remarks are considered by applicant to overcome each of the Examiner's outstanding rejections. An early Notice of Allowance is therefore requested.

On page 2 of the office action, the Examiner objected to the incorporation of essential material in the specification by reference to a foreign application or patent. The applicant respectfully disagrees that this is essential material. MPEP 608.01(p)I.A. states the following:

"Essential material" is defined as that which is necessary to (1) describe the claimed invention, (2) provide an enabling disclosure of the claimed invention, or (3) describe the best mode (35 U.S.C. 112). In any application which is to issue as a U.S. patent, essential material may not be incorporated by reference to (1) patents or applications published by foreign countries or a regional patent office, (2) non-patent publications, (3) a U.S. patent or application which itself incorporates "essential material" by reference, or (4) a foreign application.

Nonessential subject matter may be incorporated by reference to (1) patents or applications published by the United States or foreign countries or regional patent offices, (2) prior filed, commonly owned U.S. applications, or (3) non-patent publications however, hyperlinks and/or other forms of browser executable code cannot be incorporated by reference. See MPEP § 608.01. Nonessential subject matter is subject matter referred to for purposes of indicating the background of the invention or illustrating the state of the art. (emphasis added)

The text objected to by the Examiner (pages 1-2) corresponds to the background of the invention and does not (1) describe the claimed invention, (2) provide an enabling disclosure of the claimed invention, nor (3) describe the best mode and thus does not constitute essential material.

Being nonessential material, the use of incorporation by reference is permissible. The Examiner also objected to the specification because it lacked a Summary of the Invention Section. The specification has been amended to include that section. The Examiner objected to an incorrect reference to "Fig. 4b." That reference has been amended to read "7b." Consequently, the Examiner's objections to the specification have been traversed.

On page 3, the Examiner rejected claims 21-71 under 35 U.S.C. § 112, ¶ 2 as being indefinite due to their references to various equations. In addition, the Examiner rejected claims 49, 50, 65 and 66 because it refers to various drawings. Claims 21-28, 35-42, 49, 50, 55, 57, 58, 59, 65, 66 and 71 have been amended to correct the references to various equations and to correct the references to the various drawings. Accordingly, the Examiner's rejection based under 35 U.S.C. § 112, ¶ 2 are traversed.

On page 4, the Examiner rejected claims 21-71 under 35 U.S.C. 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Wilson (WO 98/45745). In particular, the Examiner contends that Wilson discloses a method for increasing the depth of discrimination of optically imaging systems comprising the steps of: projecting a periodic structure in the object; detecting N , $N \geq 3$ structured images of the object with various phase angles $\phi = n \pi / N$, where $n = 0$ to $N - 1$ of the projected structure and generating optical sections by evaluation of the images with the N different phase angles by various equations. After reviewing the page that the Examiner cited (page 3) and all of the pages of the entire reference, the applicant cannot find where the Wilson reference discloses that method or even suggests such a formula. As such, the applicant cannot reply substantively to the Examiner's rejection. The applicant respectfully requests that the Examiner specify which parts of Wilson describe the various elements of the claimed method in order that the applicant can more adequately respond.

In view of the foregoing, it is respectfully submitted that the claims are in condition for allowance and favorable reconsideration and prompt notice to that affect are earnestly solicited.

Respectfully submitted,

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